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Attorney Docket No. B45168

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bollen, et al. 13 April 2004  
Serial No.: 09/868,604 Group Art Unit No.: 1645  
Filed: June 26, 2002 Examiner: Tammy K. Field  
For: TYPE III SECRETION SYSTEM ANTIGENS FROM BORDETELLA  
PERTUSSIS

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

This paper is in response to the Office Action (Paper No. 7) dated 03 November 2003 having a shortened statutory period for reply of one (1) month. Accompanied herewith is a Petition for Extension of Time of Five Months under 37 CFR 1.136(a) with the required fee as set forth under 37 CFR 1.17.

Claims 30-78 are pending in the application. Claims 30-78 are subject to a restriction requirement and/or election requirement. Applicants desire to reply as follows.

Restriction to one of the following is required under 35 U.S.C. §121 and 372:

Group I. Claims 30-34, 47, 61-65 and 72-76 are drawn to the special technical feature of a 1st polypeptide product and kits thereof comprising a polypeptide, 1st method of making by a process for producing the polypeptide, and 1st method of using the polypeptide by a method of diagnosing a *Bordetella Pertussis* infection.

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- Group II. Claims 35-46, 48, 55-56 and 71 are drawn to the special technical feature of a polynucleotide and a kit thereof comprising a polynucleotide, 1st method of making by a process for expressing a polynucleotide, 1st method of using a polynucleotide by using a vaccine comprising a polynucleotide and *Bordetella Pertussis* antigen.
- Group III. Claims 49-54 and 56 are drawn to a vaccine comprising a polypeptide and *Bordetella Pertussis* antigen (2nd method of using a polypeptide).
- Group IV. Claims 57-70 are drawn to the special technical feature of an antibody and a therapeutic composition comprising an antibody immunospecific for a polypeptide, and 1st method of using an antibody by a method of diagnosing a *Bordetella Pertussis* infection.
- Group V. Claim 77 is drawn to the special technical feature of a method of identifying virulence genes from a pathogenicity island containing a type III secretion system from pathogenic strains of bacteria.
- Group VI. Claim 78 is drawn to the special technical feature of a method of determining whether a particular bacterial strain harbours a type III secretion system involved in pathogenicity.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Group I or Group III or Group IV

- A. SEQ ID NO: 42
- B. SEQ ID NO: 44
- C. SEQ ID NO: 46
- D. SEQ ID NO: 48
- E. SEQ ID NO: 50
- F. SEQ ID NO: 52
- G. SEQ ID NO: 54

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H. SEQ ID NO: 56  
I. SEQ ID NO: 58  
J. SEQ ID NO: 60  
K. SEQ ID NO: 62  
L. SEQ ID NO: 64  
M. SEQ ID NO: 66  
N. SEQ ID NO: 68  
O. SEQ ID NO: 70  
P. SEQ ID NO: 72

Group II

Q. SEQ ID NO: 41  
R. SEQ ID NO: 43  
S. SEQ ID NO: 45  
T. SEQ ID NO: 47  
U. SEQ ID NO: 49  
V. SEQ ID NO: 51  
W. SEQ ID NO: 53  
X. SEQ ID NO: 55  
Y. SEQ ID NO: 57  
Z. SEQ ID NO: 59  
AA. SEQ ID NO: 61  
BB. SEQ ID NO: 63  
CC. SEQ ID NO: 65  
DD. SEQ ID NO: 67  
EE. SEQ ID NO: 69  
FF. SEQ ID NO: 71

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. This reply must also identify the claims readable on the elected species, including any claims subsequently added.

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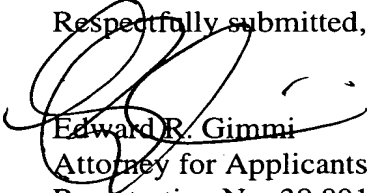
REPLY

In response to the restriction requirement, Applicants wish to make a provisional election of Group I, i.e., Claims 30-34, 47, 61-65, and 72-76, with traverse. Applicants are also requested to elect a species (i.e. a sequence from subgroups A-P) if Group I has been elected. Applicants wish to make a further provisional election of subgroup A, i.e. SEQ ID NO:42 with traverse. Applicants retain the right to file divisional application directed to the non-elected subject matter should the restriction requirement become final.

Applicants' traversal is based upon the absence of a showing that the inventions are independent and distinct. Under 37 CFR §§ 1.141-1.142 and 35 U.S.C. § 121, restriction is proper only when "independent and distinct" inventions are claimed in a single patent application. "Independent" means that the subject matter of the claims bear no disclosed relationship. MPEP 802.01. "Distinct" means that the subject matter of the claims are capable of separate manufacture, use or sale and are patently distinct MPEP 802.01.

It is respectfully submitted that the claims of Group I A-P, Group II Q-FF, Group III A-P, Group IV A-P, and Groups V and VI are related and are not "independent" as defined under MPEP 802.02. Therefore, Applicants respectfully request that the restriction requirement be withdrawn. However, it is noted that, although Applicants have traversed the restriction requirement on the ground that the claimed inventions, as grouped by the Examiner are not independent, Applicants are not traversing the restriction requirement on the ground that the inventions are not patentably distinct.

Respectfully submitted,

  
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